

Claims Report
U.S. Army Claims Service

Foreign Tort Claims Note

Government Owned Vehicles Colliding with Rental Cars—Who Pays For the Damage?

Many Government travelers rent cars while on temporary duty (TDY). The savvy government renter arranges his rental through the government-contracted travel agency and rents from a rental agency that participates in the Surface Deployment and Distribution Command's¹ (SDDC) Car Rental Agreement.² That agreement provides coverage for the government renter in case the renter damages the rental vehicle. But what if the rental car is damaged as a result of a collision with a government vehicle (GOV), and the driver of the GOV, not the rental vehicle, is at fault?

Paragraph 9b of the SDDC Agreement provides that:

Notwithstanding the provisions of any Company vehicle rental agreement executed by the Government renter pursuant to this agreement, the Company hereby assumes and shall bear the entire risk of loss of or damage to the rented vehicles (including costs of towing, administrative costs, loss of use, and replacements), from any and every cause whatsoever, including without limitation, casualty, collision, fire, upset, malicious mischief, vandalism, tire damage, falling objects, overhead damage, glass breakage, strike, civil commotion, theft and mysterious disappearance . . .³

This provision does, however, exclude loss or damage resulting from eleven exclusions listed in the agreement. These exclusions generally cover loss or damage intentionally caused by the driver, illegal or improper acts, theft where the renter cannot produce the keys, and operation in unauthorized locations.

Lately, the U.S. Army Claims Service has received notice of several claims by rental agencies for damage to their rental vehicles rented under the SDDC Agreement that occurred as a result of collisions with GOVs. The rental agencies assert that the agreement prevents them from filing a claim against the renter, but not against the Government, when the GOV driver was at fault in the collision. Should claims offices pay these claims?

The answer lies in the terms of paragraph 9 of the SDDC Agreement and the law of the state where the accident occurred. Paragraph 9a of the SDDC Agreement provides that:

Notwithstanding the provisions of any Company rental vehicle agreement executed by the Government employee when renting a vehicle under the terms of this agreement, the Company will maintain in force, at its sole cost, insurance coverage, or a duly qualified self insurance program, which will protect the United States Government and its employees using vehicles under this agreement against liability for . . . property damage arising from the use of the vehicle. . . . The conditions, restrictions and exclusions of the applicable insurance for any rental shall not be less favorable to the Government and its employees than the coverage afforded under standard automobile liability policies. When more favorable insurance terms are required under applicable state or foreign country law, such terms will apply to the rental.⁴

The rental agencies' position is that the insurance coverage applies only to the rental vehicle's driver, and not to any other government employee. Thus, the agencies argue that they may hold the United States financially liable for the damage because a different government employee caused the damage. The rental agencies argue that, since the renter was blameless in the accident, the liability insurance and damage waiver provisions of the SDDC agreement do not apply.

This argument is fallacious. Paragraph 9b clearly states that the rental agency bears "the *entire risk* of loss of or damage to the rented vehicles . . . from *any and every cause* whatsoever, including . . . *collision*," so long as none of the listed exceptions apply.⁵ There is nothing in this explicit and expansive provision that allows the rental agency to pursue the United States for damages to the rental vehicle. The rental agencies, in negotiating the SDDC Agreement, took pains to exclude certain instances from this coverage; they could easily have explicitly excluded loss or damage resulting from a collision with a GOV.

¹ Formerly the Military Traffic Management Command.

² Surface Deployment and Distribution Command, *U.S. Government Car Rental Agreement No. 3*, at <http://www.sddc.army.mil/CONTENT/656/rentalcaragreement.pdf> (last visited Sep. 13, 2004).

³ *Id.* at 5.

⁴ *Id.*

⁵ *Id.*

In addition, the insurance coverage provided in paragraph 9a of the SDDC Agreement explicitly covers “*the United States Government* and its employees,” not just the individual renter and other authorized users of the rental vehicle.⁶ As any claim for damage to the rental car arising from a collision with a GOV is a claim against the United States (if the GOV driver was acting within the scope of his duties), the SDDC Agreement’s reference to the “United States Government” includes not only the renter and other authorized users of the rental agency, but also the driver of the GOV.

Finally, the SDDC Agreement places the rental agency in the position of an insurer of the government driver and the United States for damages arising from the use of the rental vehicle. Under most state laws, an insurer may not file suit as a subrogee against its insured to recover damage paid to the insured.⁷

Claims offices who receive claims from rental agencies participating under the SDDC Agreement should deny the claims and cite the provisions of paragraphs 9a and b in the denial letter. In addition, claims offices should research the relevant state law on insurers’ subrogation rights against their insureds. Where, as in most states, the state law prohibits this practice, that law serves as another basis for denial of the claim. Douglas A. Dribben, Foreign Tort Claims Branch.

⁶ *Id.*

⁷ *See, e.g.,* Frontier Ford, Inc., v. Carabba, 747 P.2d 1099 (Wash. App. 1987); Dairyland Ins. Co. v. Munson, 193 N.W.2d 476 (1972); Pendlebury v. Western Cas. & Sur. Co., 406 P.2d 129 (1965).